

**UNREPORTED**  
**IN THE COURT OF SPECIAL APPEALS**  
**OF MARYLAND**

No. 0988

September Term, 2013

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JARROD WARREN RAMOS

v.

STATE OF MARYLAND

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Meredith,  
Kehoe,  
Kenney, James A., III  
(Retired, Specially Assigned),

JJ.

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Opinion by Meredith, J.

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Filed: April 22, 2015

In this appeal, Jarrod Warren Ramos, appellant, who prayed a jury trial after he was charged in the District Court with harassment under Maryland Code, Criminal Law Article (“Crim.”), § 3-803, challenges an order by the Circuit Court for Anne Arundel County remanding his case to the District Court of Maryland for Anne Arundel County. The circuit court ruled that it lacked subject matter jurisdiction because Maryland Code, Courts and Judicial Proceedings Article (“CJP”), § 4-302(e)(2)(i), provides: “Unless the penalty for the offense with which the defendant is charged permits imprisonment for a period in excess of 90 days, a defendant is not entitled to a jury trial in a criminal case.” The circuit court determined that appellant is not entitled to a jury trial because, even though he was previously prosecuted for violating Crim. § 3-803, he fulfilled the conditions of probation before judgment imposed with respect to that prior charge, and therefore, he is not subject to the enhanced sentence of up to 180 days that applies to “a second or subsequent offense” because there was no prior conviction of record following his discharge from probation.

In his *pro se* brief, appellant presents the following questions:

1. Did [the circuit court] err as a matter of law by ruling [it] did not have jurisdiction?
2. Has the District Court been conclusively deprived of jurisdiction by the State’s failure to appeal that court’s exercise of its exclusive original jurisdiction?

We answer “no” to both questions, and affirm the circuit court’s order remanding the case to the District Court.

## FACTS AND LEGAL PROCEEDINGS

In February 2013, the State charged appellant in the District Court of Maryland for Anne Arundel County with misdemeanor harassment in violation of Crim. § 3-803, which provides in pertinent part:

(a) **Prohibited.** - A person may not follow another in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other:

(1) with the intent to harass, alarm, or annoy the other;

(2) after receiving a reasonable warning or request to stop by or on behalf of the other; and

(3) without a legal purpose. . . .

\* \* \*

(c) **Penalty.** - A person who violates this section is guilty of a misdemeanor and *on conviction* is subject to:

(1) for a *first offense, imprisonment not exceeding 90 days* or a fine not exceeding \$500 or both; and

(2) *for a second or subsequent offense, imprisonment not exceeding 180 days* or a fine not exceeding \$1,000 or both.

(Italics added.)

Appellant demanded a jury trial, and represented in his written demand: “Because this would be defendant’s second offense under the statute, if convicted, he faces 180 days in jail and therefore is entitled to a trial by jury.” As a result of this jury demand, the District Court transferred appellant’s case to circuit court, in apparent reliance upon CJP § 4-302(e), which

provides: “The District Court is deprived of jurisdiction if a defendant is entitled to and demands a jury trial at any time prior to trial in the District Court.” The circuit court received the case on April 18, 2013.

By motion filed on May 9, 2013, the State moved to remand the case to the District Court, invoking CJP § 4-302(e)(2)(i), which precludes jury trials on criminal charges punishable by a term of 90 days or less. The State represented that, although appellant had “received a guilty conviction” for harassment on July 26, 2011, he had subsequently been granted probation before judgment as to that charge. The State represented in its motion: “Since the defendant received a Probation Before Judgment prior to the events of this case occurring he would not be classified as a subsequent offender thus subject to a maximum penalty of only 90 days.” Consequently, the State represented that appellant was not subject to the longer sentence described in Crim. § 3-803(c)(2), and therefore, because appellant was not entitled to a jury trial, the circuit court lacked subject matter jurisdiction. *See* CJP § 4-302(e).

Through counsel, appellant argued, in written opposition and at a hearing, that, even though appellant’s prior harassment charge was resolved pursuant to a grant of probation before judgment, the record would nevertheless reflect that appellant had pleaded guilty to committing the prior harassment “offense,” such that this new charge would be his “second or subsequent offense” for purposes of the enhanced 180 day sentence under Crim. § 3-803(c)(2).

The circuit court and counsel reviewed the record, which showed that appellant pleaded guilty to a 2011 charge of harassment in violation of Crim. § 3-803 and was initially sentenced to 90 days' incarceration. But, pursuant to the appellant's motion for reconsideration, the court struck appellant's 2011 conviction, and, on November 14, 2011, imposed a sentence of probation before judgment ("PBJ"), plus a fine and costs. Appellant agreed to, and completed, a probationary period of eighteen months, during which he was subject to various conditions.<sup>1</sup>

In the present case, the State disputed that the 2011 charge giving rise to appellant's PBJ qualified as a prior "offense" that subjected him to the sentencing enhancement under Crim. § 3-803(c)(2) for a "second or subsequent offense." According to the prosecutor in the present case, the State could not invoke the sentencing enhancement pursuant to Crim. § 3-803(c)(2) because the "subsequent offender" provision of the statute requires a prior conviction and appellant's PBJ did not qualify as such. *See* Maryland Code, Criminal Procedure Article ("CP"), § 6-220(g) ("On fulfillment of the conditions of probation, the court shall discharge the defendant from probation" and such a discharge "shall be without judgment of conviction and *is not a conviction for the purpose of any* disqualification or *disability imposed by law because of a conviction of a crime.*" (Emphasis added.)).

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<sup>1</sup> Although the State later charged appellant with violating some of those conditions, the State ultimately not pressed the violation of probation charge.

The State also relied on Maryland Rule 4-425, which requires notice to any defendant facing a sentencing enhancement. Subsection (a) of the rule defines a “subsequent offender” as “a defendant who, because of a prior **conviction**, is subject to additional or mandatory statutory punishment for the offense charged.” (Emphasis added.) Under subsection (c), when the State contends that a mandatory sentencing enhancement applies to a particular charge, it must give the defendant notice of the increased penalty. Under subsection (e), the court must “determine whether the defendant is a subsequent offender as specified in the notice of the State’s Attorney.”

Counsel for appellant countered that the State was mistaken to focus on convictions or the definition of a “subsequent offender” under Rule 4-245, because the controlling language in Crim. § 3-803(c)(2) is the broader term “offense.” Appellant’s counsel asserted that appellant must be treated as a subsequent offender because he “pled guilty, paid a substantial fine and related costs, and was subjected to 18 months of supervised probation, during which he was forced to defend against a violation of probation charge.” Moreover, counsel for appellant argued that the rule of lenity required the court to resolve any ambiguity regarding a defendant’s right to a jury trial in favor of a trial by jury.

Over appellant’s opposition, the circuit court granted the State’s motion, concluding that appellant was not entitled to a jury trial because the prior charge that was resolved by way of PBJ did not qualify as a prior offense for purposes of the sentencing enhancement

provision under Crim. § 3-803(c), and therefore, the circuit court lacked subject matter jurisdiction.

### **MOTION TO STRIKE**

Preliminarily, we note that appellant filed a motion to strike the State’s brief, citing Maryland Rule 8-504(a)(9), the rule that requires that “the font used and the type size in points shall be stated on the last page.” Although the State’s brief includes this information in very fine print below the signature block for the State’s counsel, appellant asserts that the the State’s statement violates the rules as to size of typeface and placement “on the last page.” Because we perceive no prejudice to appellant, we will deny the motion.

### **DISCUSSION**

Because appellant challenges the circuit court’s ruling that, as a matter of law, it lacked subject matter jurisdiction, we review the circuit court’s ruling *de novo*.

In the circuit court, counsel for appellant argued that, by authorizing a sentence of up to 180 days “for a second or subsequent **offense**,” rather than for “a second or subsequent **conviction**,” the General Assembly left the door open for the court to impose this longer sentence based on his prior admission of guilt. (Emphasis added.) Counsel for appellant posited that, even though appellant presently has no prior *conviction* for harassment, he is subject to the longer sentence under subsection 3-803(c)(2)(ii) because he admitted

committing a prior *offense* **and** “served” an 18-month PBJ. But, in his brief filed in this Court, appellant makes no argument regarding the statutory interpretation of Crim. § 3-803.<sup>2</sup>

Instead, in appellant’s brief in this Court, he presents an argument that was not raised in the circuit court. To the extent that this argument addresses the jurisdiction of the circuit court to take the action it did, we will consider the argument even though it was neither raised in nor decided by the circuit court. *See* Maryland Rule 8-131(a) (jurisdiction “may be raised in and decided by the appellate court whether or not raised in and decided by the trial court”). The argument presented in appellant’s brief asserts that, once the District Court transferred his case, the question of whether there was subject matter jurisdiction could not be revisited by the circuit court. He maintains that the decision as to whether he was entitled

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<sup>2</sup> Although appellant has abandoned the conviction-offense argument on appeal, we note that the legislative history of 2011 Md. Laws, ch. 342, which added the penalty enhancement for “a second or subsequent offense,” suggests that the term “offense” was used interchangeably with “conviction” in the Fiscal and Policy Note, which stated that “[t]his bill increases the maximum penalties for a second or subsequent **conviction** for the crime of harassment[.]” H. B. 510, 2011 Gen. Assem., Fiscal and Policy Note at 1 (Rev. Mar. 28, 2011), *available at* [http://mgaleg.maryland.gov/2011rs/fnotes/bil\\_01000/hb051.pdf](http://mgaleg.maryland.gov/2011rs/fnotes/bil_01000/hb051.pdf).

Moreover, practical considerations also weigh strongly against narrowly construing “offense” as the mere commission of a criminal act. In the absence of a prior conviction of record, in order to establish the factual predicate for a penalty enhancement, the State would have to prove beyond a reasonable doubt that the defendant committed the prior offense as well as the present offense. Conducting such a “trial within a trial” could present significant problems, not the least of which would be whether (and if so, when) to admit evidence that may otherwise be inadmissible as irrelevant or unduly prejudicial “other crimes, wrongs, or acts.” *See generally* Md. Rule 5-404(b) (“Evidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith.”).



to a jury trial was a ruling committed exclusively to the District Court, and therefore, that court's dispositive ruling cannot be challenged by the State because the State did not note an appeal from the transfer order. Appellant asserts that, when the District Court transferred his case to circuit court, "[t]he circuit court thus acquired jurisdiction," and "[i]t then was immaterial whether or not [appellant] was an alleged repeat offender or subject to imprisonment for more than 90 days." According to appellant's current argument, because the jurisdictional "test" established by the Court of Appeals in *State v. Huebner*, 305 Md. 601, 611-12 (1986), "is a District Court procedure," and the State failed to note an appeal from the transfer order, "[i]t is of no consequence that [a]ppellant's counsel at one point agreed [that] an incorrect issue controlled where jurisdiction rested."

We do not agree with appellant's contention that the State cannot challenge, by way of a motion filed in the circuit court, the circuit court's jurisdiction to receive a transfer from the District Court. To the contrary, subject matter jurisdiction may be raised at any time by any party or by the court itself. *See County Council of Prince George's County v. Dutcher*, 365 Md. 399, 405 n.4 (2001); *County Council of Prince George's County v. Zimmer Dev. Co.*, 217 Md. App. 310, 319 (2014) (citing *Dutcher*). Because the State was entitled to challenge the circuit court's subject matter jurisdiction at any time, the circuit court did not err in considering the question of whether it lacked subject matter jurisdiction.

Moreover, with respect to the second "question presented" in appellant's brief, we note that the State had no right of "appeal" from the District Court's transfer order. *See CJP*

§ 12-401(b). Consequently, the jurisdiction of the circuit court was properly challenged by the State's motion promptly filed in the circuit court, and, because the District Court could not confer jurisdiction upon the circuit court to adjudicate this case, the circuit court properly remanded the case to the District Court for further proceedings.

**MOTION TO STRIKE APPELLEE'S BRIEF  
DENIED.**

**ORDER REMANDING CASE TO THE  
DISTRICT COURT FOR ANNE ARUNDEL  
COUNTY AFFIRMED. COSTS TO BE PAID  
BY APPELLANT.**